

**CASCADE COUNTY
ZONING BOARD OF ADJUSTMENT**

Meeting Minutes

Thursday August 28, 2019

5:00 PM

Family Living Center, Montana Expo Park
400 3rd St. NW

Board Members: *Bill Austin, Charles Kuether, Leonard Reed, Rob Skawinski, Michele Levine*

Notice: Pursuant to MCA 2-3-212(1), the official record of the minutes of the meeting is in audio form, located at cascadecountymt.gov and the Planning Office. This is a written record of this meeting to reflect all the proceedings of the Board. MCA 7-4-2611 (2) (b). Timestamps are indicated in red, within each agenda item below, and will direct you to the precise location should you wish to review the audio segment.

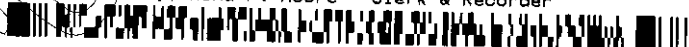
These minutes are paraphrased and reflect the proceedings of the Zoning Board of Adjustment. These minutes are considered a draft until the Zoning Board of Adjustment approves them.

STAFF ATTENDEES: Anna Ehnes, Destiny Gough, Carey Haight, Sandor Hopkins, Michael Stone, and Charity Yonker.

PUBLIC ATTENDEES: Walt Alsbaugh, Nancy Anderson, Kathy Austin, Kyler Baker, Bernadette F. Bankhead, Steven Bankhead, Pat Broadus, Kathy Buckles, Paula Buland, Gloria Burrows, Judson F. Burrows, John Casselli, Cheryl Chaon, Helen Coleman, Leanna Coulter, Carolyn Craven, Brett Daney, Mary Beth Ewen, Karen Fisher, Karen Flater, Kerry Ann Fraser, Edward Friesen, Carol Gamell, Jim Gamell, Martha Garrigues, K.L. Gispn, Linda Gonser, Richard Gregovich, Vern Greyn, Gretchen L. Grubidge, Steve Grubidge, Margaret Halvorson, Denise Harmon, Stacy Hermiller, Afriq Damial Hisham, Brian Hopkins, Richard Hopkins, Dan Huestis, Peyton Huffman, Eileen Hyndman, Deborah Jenkins, Michael Jenkins, Kate Johnson, JC Kantorowicz, Tammy Kantorowicz, Nate Kluz, Sharon Kohles, Kirsten Krauss, Lila Langel, Jesse Lee, Cleve Loney, Kevin May, Cheryl McGee, Kathleen McMahon, Charlotte Mehmke, Joe N. Murphy, Lindsey Nichols, Sue Ellen Olds, Kelly Olson, Ken Palisen, Angie Poupa, Tony Poupa, Linda Redding, CJ Reeves, Gloria E. Reeves, Neal Rubino, Elaine Schoyen, Patricia Shafer, Linda Short, William N. Shurt, David Smith, Janelle Smith, Tammy Lynne Smith, Tyrell Smith, Joy Stender, Zack Strong, Ken Thompson, Terry Thompson, Erin Tropila, Pennie Vihinen, Ron Vihinen, John Viles, Jo Walden, Chris Walker, Christine Ward, Dennis Ward, Lalonnie Ward, and Alexis Williams.

R0379583 CMS

Total Pages: 38 R 0.00 By: tmarch 11/20/2019 08:54:07 AM
Cascade County, Rina Ft Moore - Clerk & Recorder



1. CALL TO ORDER: Bill Austin called the meeting to order at 5:33 PM

Bill Austin (00:00:08) greets the room and explains that Sandor Hopkins will be explaining some of the procedures for the meeting.

Sandor Hopkins (00:00:55) introduces himself and states that there are some detailed agendas near the entrance door. He then explains what the order for the meeting is, as well as some of the procedures for the meeting.

Bill Austin (00:03:34) asks for everyone to silence their electronic equipment.

2. ROLL CALL

BOARD MEMBERS PRESENT: Bill Austin, Charles Kuether, Michele Levine, Leonard Reed, and Rob Skawinski.

BOARD MEMBERS ABSENT: none.

3. APPROVAL OF MINUTES:

A. June 13, 2019, Meeting Minutes

Michele Levine (00:04:33) states that there is a mistake on this set of minutes.

The chairman agrees.

Michele Levine (00:04:47) moves to approve the minutes with amended corrections.

Bill Austin (00:04:52) says the minutes are good and asks for a second on the motion made by the vicechair.

Leonard Reed seconds the motion to approve.

All in favor, motion carries 5-0.

B. JUNE 27, 2019, Meeting Minutes (Pending Completion)

C. JULY 22, 2019, Meeting Minutes

Bill Austin (00:05:49) says the minutes look good. He asks if anyone has any opinions on this set of minutes.

Leonard Reed (00:05:57) says that he motions to approve.

Charles Kuether seconds the motion to approve.

All in favor, motion carries 5-0.

4. OLD BUSINESS:

A. SUP 006-2019, Value-added Agricultural Commodity Processing Facility: Cheese Processing Plant¹

1. Board Discussion & Action

¹ For more information on SUP 006-2019, Value-added Agricultural Commodity Processing Facility: Cheese Processing Plant please visit: <http://www.cascadecountymt.gov/departments/public-works/planning/project2>.

Motions:

- A. Alternative 1:** "Move the Special Use Permit to allow a Value-added Agricultural Commodity Processing Facility: Cheese Processing Plant on Parcel 0005348300, Geocode 02-3017-34-4-02-01-0000 **be denied** (ZBOA member proposing denial must delineate legal reason that the application be denied)."

OR

- B. Alternative 2:** "Move the Board adopt the staff report and findings of fact and **approve** the Special Use Permit for a Value-added Agricultural Commodity Processing Facility: Cheese Processing Plant on Parcel 0005348300, Geocode 02-3017-34-4-02-01-0000 subject to the following conditions:

1. The applicant obtains a Driveway Approach Permit from the Montana Department of Transportation and complete a Transportation Impact Study (TIS) if required by MDT.
2. The applicant obtains necessary water rights from the Montana Department of Natural Resources and Conservation.
3. The applicant obtains approval from the City-County Health Department and Montana Department of Environmental Quality (DEQ) for a new public water supply and wastewater system.
4. The applicant obtains Montana DEQ general permit for stormwater discharges associated with construction activity. After construction, install required onsite detention basins for stormwater runoff.
5. The applicant obtains any other county, state, or federal permits required by the respective agency for the legal operation of the proposed use.
6. The applicant adheres to all relevant building code requirements established by the Department of Labor and Industry.
7. Operation hours be limited to 7:00 AM to 7:00 PM.
8. All cheese manufacturing process activities must occur inside a fully enclosed building and not be visible to the general public.
9. All setback requirements for the A District must be followed.
10. Outside storage must be fully screened to conceal work equipment or materials not stored inside.
11. No structure extends into the height overlay district."

Charles Kuether (00:06:59): "Umm, Kind of to kick off the discussion, I, I put together. Can you guys hear it? Okay, kind of to kick off the discussion. I put together, I put together a summary of some of the items that I looked at and want to try to read you what I've put together. I typed it up just so that I wouldn't forget some of the things I had on my mind. In addition to the comments received at the public meeting, the board received some three hundred pages of written comments or attachments to comments from people considering the proposed cheese processing plant project. The majority of the written comments were from Cascade County. Though we did get comments from people living in other counties from throughout the state and from one apartment dweller in Indiana. To organize my thoughts, I tried to genuinely categorize whether a comment was pro, con, or neutral towards the proposed project.

Some letters offered comments both ways, so they were not easy to label. It's hard to tell the motivation some of the folks who wrote the comments. Approximately (and this is just by my

count) fifty-six percent of the comments were negative, nineteen percent of the comments were positive, and twenty-six percent of the comments I wouldn't label either way. The percent of negative comments is misleading without explanation. Many simply oppose the slaughter plant, which is not part of this application. Many felt this application was just a way for the applicant to get his foot in the door. So, he could follow up with a slaughter plant. A few appeared to oppose the application because the applicant, because of the applicant uh, himself was Friesen. Some oppose stated opposition to the slaughter plant, but within limits, were willing to see the cheese processing plant approved. Three people provided the bulk of the comment pages.

One of those persons wrote seventeen separate times. Those three people provided fifty-seven, seventy-eight, and ninety-three pages individually or two hundred and twenty-eight pages collectively or about seventy-six percent of the comment pages. Before I go any further, what do you say? I, I don't pretend to represent that I'm giving you an exact page count. Pages were not numbered and the number of pages I referenced from the three individuals is the number that I counted. In one person's case, more pages came in after I stopped counting, so I know that number is larger. The point is not the actual number of pages, but just to give you an idea flow of the comments as well as their distribution. One of the people who provide these bulk pages, I found out from other commenters was employed by Montanans for Responsible Land Use; as well as I can tell that commenter did not disclose her employment.

Failure to, failure to disclose that employment didn't strike me as very professional and makes it more difficult for one to take those comments and judge them fairly as the author failed to disclose the motivation for those remarks. I'm a lawyer and when I represent a client, I think it's fair to disclose that representation, so people know the basis for the reasoning or representations that I make. I think when you people watch TV, you see a judge and in front of a courtroom and the judge asks, are you representing the plaintiff? Are you representing the defendant? That's the sort of process that I'm used to. And so, when someone provides comments and doesn't indicate why they're making those comments in that they're employed by someone. It, it seems a little disingenuous. Broadly, the greatest number of comments seem to fall into four general areas. I've, I've numbered them in. I'll follow up with some comments.

First water usage for the proposed plant. Second traffic generated by employees, deliveries, and customers. Third value added agriculture and a direct lev-leveraging of local resources, and four an increase in tax base. The Environmental Information inter-center, Information Center (MEIC)—I just wait a lot of people you may know the object —has expressed concerns about the wastewater treatment ponds and whether they should be lined and the kind of lining material that they might have. And then back to these numbered I-items I just talked about, with respect to number one—and that's the water usage—as proposed the water usage for the plant, and I'm referring to it as CCP (just cause I'm lazy) uh, would be thirteen thousand gallons a day. I've tried to get information for usage from source Giant Springs Water Bottling and the Malting Plant whose water usage was brought to attention and comments that we received.

Staff tells me to the wa-malting plant uses a portion of the fish hatchery water right; and that it is considered non-consumptive, because the water is piped back into the system and then released to the city treatment plant. Then deschi-discharged into the river above the dam. The Department of Natural Resources—and they operate the fish hatchery—advise the staff that the Giant Spring source has a similar arrangement with the fish hatchery using a portion of its water right, having been approved for maximum draw of three hundred gallons a minute or four hundred and thirty-two thousand gallons a day. Department of Natural Resources does

not believe they're using that full draw staff has also advised us the Giant Springs—and that's water that comes out of the Madison, which is the aquifer that the eh CCP would be using for their water source—lowers hundred and fifty-six million gallons into the Missouri River each day from that quote source.

The applicant has also provided us information on estimated draw down based on the proposed use from ah, nearby well. And then kind of the conclusion I reached based on some of the information based on those facts, it does not appear that the proposed use would negatively affect the Madison formation from which the cheese processing plant would be obtaining its water. Now ultimately, the Department of Environmental Quality regulates water use. So that, not strictly speaking something that this board is gonna control, but just so you have the background, you know the information we have received and where we're coming from or where I'm coming from.

The next item was traffic, and people expressed concerns on three levels con-concerning traffic. One was traffic at the site where people would enter or exit Highway 89. Another one was whether a high- ah, 10th Avenue South could handle traffic of an additional se-seven trucks a day and third was a field of vision for drivers entering and leaving High-Highway 89 from the cheese processing plant. The staff report indicated that there are four-thousand, three hundred, and forty-two vehicles per day currently in the vicinity of the proposed plant. They also gave us another number which was lower for ah, site that eh, is not quite as close, so I used the higher number. The staff reported that the Montana Department of Transportation will require an Approach Permit and require a tra- may require a traffic impact study that will address these issues. If this board does decide to issue a permit. As far as item number three, which is value-added agriculture, the commenters discussed whether the m-milk plant could be using milk from local producers, whether there was sufficient milk supply, the eh, need for milk to produce cheese and the potential volumes of milk and cheese that would be needed or produced. Finally, people questioned whether the proposal was based on good business judgment, which is obviously a matter beyond the scope of jurisdiction of this board and as a business decision not one for a regulatory body. Nobody wants government butting into their business.

Okay, these concerns need to be addressed by—this my comment with respect to that—those concerns. These concerns need to be addressed by the applicant in order to make a business decision. The applicant would need to address these issues if and only if the board decides to issue a permit. And then the last item was about the increase in tax base and I only found causes—positive comments about the increase in tax base. So that's my summary of the comments that I perceived to review, Mr. Chairman."

Bill Austin (00:16:16): "Thank you Charles. That's pretty ah... pretty in-depth ahh, research. I really appreciate that. Several items that he did mention are items that the um, business itself should be addressing and as Charles said, that doesn't, is not a concern of this board. That's not what our ah, job is. So, Leonard do you have any-anything to say."

Leonard Reed (00:16:47): "Ah-um, I will save my comments for later. Um."

Bill Austin (00:16:54): "Rob?"

Rob Skawinski (00:16:55): "Now you go ahead and say anything."

Michele Levine (00:16:55): "No, you first."

Rob Skawinski (00:16:54): "No, I have none."

Bill Austin (00:16:58): "I know Michele does."

Michele Levine (00:17:01): "I do but I would like to hear your thoughts first Mr. Chair."

Bill Austin (00:17:07): "I'd rather hear yours or—if that's okay?"

Michele Levine (00:17:15): "Okay, um, I agree with Charles, that the volumes of comments are difficult to digest."

Bill Austin (00:17:24): "Right, right it does."

Michele Levine (00:17:25): "And uh, it makes it challenging for us to prepare our detailed findings regarding each um, category of criteria that we are required to address pursuant to the regulations. And that makes it difficult for us to come up with a detailed mitigation measures um, in order to address each public comment so that the public feels that we have heard them, considered their comments, and uh, basically decided whether or not it is relevant and whether it deserves a mitigation measure. Um at this time, I don't feel prepared with those findings or with the mitigation measures um, to provide the adequate um, mitigations for the project um. I also wished that I had more information. Staff did submit the project to uh, the Public Works Department. I don't think they commented on traffic or sight lines, which is one of the things we are to consider. Uh, and so, that's just one example uh. It would be helpful um, to digest all of the comments perhaps in a grid format um, regarding the substance of the comment, whether or not it's applicable to the project and the review criteria. And if yes, which category and then if so, is there a potential meaningful mitigation measure? I think that would be a helpful way to potentially structure our um, detailed, uh, findings which we are required to make um, with our decisions and to help us work through those, in fairness to the public and to the applicant. Uh, one proposal would be to have staff um, attempt to do that type of digestion in a word document or spreadsheet form that is then um, published on the website. It will also help inform the public what is considered relevant information to us for our purposes. I recognize that is an additional burden on staff time and resources."

However, I think the uh, detailed nature of the project and the significant community impact that it can bring both positive and negative requires that level of detailed deliberation um, for our community. I think that will help um, inform the public process um, and um, slow down the decision but in a meaningful way so that we can have very thorough and deliberate um, discussion. Otherwise, um, we will have to do that sort of on the fly um, by uh, basically doing our best to summarize the comments and draft the mitigation measures somewhat on the fly. And I don't feel um, as comfortable doing that and I don't know that that will be as fair to the public or the applicant um. So, those are a couple of facts that's just based on best practices. Um, there is also ah, an increase in litigation regarding zoning projects both from project applicants and from citizens. I think that this is a way for us to move forward in a thoughtful manner."

Um, I also um, I just want to remind the public that we ah, work for free. We are volunteers. We are not paid to be here. We do this out of our own time um, and that um, that it is important for us to be civil to each other as uh, we work through these. I recognize this has a lot of impacts for people um, but we are doing our best as we can as unpaid volunteers appointed by the Commissioners to make these decisions and to be respectful as we do so. So that is my, my long-winded thought process um, regarding how to proceed um, but I um, respectfully wished to hear from the rest of you, um, regarding your thoughts and what you would like to do."

Bill Austin (00:21:41): "Thanks, Michele. I wasn't as thorough as Charles or as Michele, I also have that stack about so deep of ah, comments. I read many, many of the comments. Several of them were pretty much ah—I don't know if they got together to write their comments, but they're almost exactly the same. And the way I read personally (just from me) on some of these comments is that their thought process of the (people writing these comments) is that the cheese factory is just a way for the ah, applicant to uh, work his way in so to speak, and then ahh, this slaughterhouse that we always hear about that ahh, is totally detached from what we're looking at. But I read that in the so many of those comments and I don't know how Charles, you get delineated those out of there ah, ah, but there was an awful lot and, and I agree with what Michele says is very difficult to uh, actually reach a conclusion that's going to be satisfactory to huh everybody. We just have to go by the way the statutes are written in the law and govern accordingly. Uh, those are my comments. Rob?"

Rob Skawinski (00:23:26): "Well, I'm kind of a cut to the chase kind of guy. So, um—"

Some public attendees interrupt to say that they cannot hear Mr. Skawinski.

Rob Skawinski (00:23:31): "I think well, I mean, we've all read all the comments. They're all um, they're pretty much centered around the same thing uh. And it all boils down to uh, I think the legality of it. I mean, we've got two options. Eventually, we got either to make a motion to deny it or we make the motion to approve it. If we're gonna make the motion to deny it, we have to have a legal reason to do so. So um, at this point in time, I can't find one and I mean we could spend the next six months looking for one, but eventually we got to come up with a decision. So, um, I think a lot of these issues... The water rights, the traffic usage um, those aren't our issues uh. The water rights issues are for uh, DNRC. So, it's not within our jurisdiction. Uh, the line of sight um, the encroachment permit from the highway is not our jurisdiction that's in MDT. So, a lot of these concerns are not for us to decide. So, unless we can find something else, then I think we have to make a motion to approve it."

Bill Austin (00:24:49): "Okay."

Rob Skawinski (00:24:50): "But, um—"

Bill Austin (00:24:51): "I'd like to comment on, on the water. I read as much as I could. They're all sorted, it doesn't look to me.... Some people were concerned that it was going to be a heavy use on that water. And everything I can get my hands on did not demonstrate that. So, I think it is well within uh, what they would be able to use without hurting the ah, water table in that respect. Uh, I also agree on the line of sight for traffic coming on and off. That's up to the highway department to do those things. And uh.... Now Leonard, do you?"

Leonard Reed (00:25:37): "Well it's a privilege to be able to serve our county in this regard um. We all wonder what we're doing here really. Why we're ending up err doing this, but we're all interested in the basic ah, improvement of our community and our business um, climate here and um, there's been a lot of study done. I can see Michele uh, thinking and uh, there are some things that need to be answered before the decision is made uh. If the board feels that way, why I would certainly support uh, tabling this at this point and bringing it up when we have a clearer picture of the um, the advantages versus the disadvantages. Mr. Chairman."

Bill Austin (00:26:45): "Thank you. I kinda line up with Rob um. I, I don't see um, a legal reason on everything that we have covered. And I know I'm not a lawyer. We have a couple of lawyers here. And sometimes that's good and sometimes that's bad. My opinion only, but I'm kind of

lining up with Rob. Uh, he's the businessman understands business also. So anyway, that's, that's where I am. Charles anything else?"

Charles Kuether (00:27:22): "I, I don't have any more. I don't have anything more to add to the discussion. If, if the board is through discussing application, I'm willing to take the motion for the purpose of seeing whether the board is interested in supporting it."

Bill Austin (00:27:38): "Okay, thank you. Well, at this point, I will open the board uh, and entertain a motion."

Charles Kuether (00:27:22): "Okay, I, I'm going to make a motion and I actually printed it out. And I'm going to pass it down so you guys each have a copy and that way—because it's long winded—and that way if you guys want to modify my motion or object to some portion of it, you have it in front of you and you know what you are going object to. Okay, after reviewing the records before us and—"

Sandor Hopkins (00:28:20): "Can we get a copy of that as well please? Or or copy of that please?"

Charles Kuether (00:28:24): "I-I actually have an electronic copy for you of that in the long run, if this [motion] passes."

Sandor Hopkins (00:28:28): "Even better thank you."

Charles Kuether (00:28:30): "Uh alright, after reviewing the records before us and eh, and the application, the staff report, the many attachments, the public comment, the written public comment, I move the board adopt the staff report and its findings of fact starting on page two of the report as well as the findings with respect to the analysis criteria also contained in the staff report dated 06/27/2019 for SUP 006-2019 pages four through twenty-four of the staff report and **approve** the Special Use Permit for the applicant's proposed Cheese Processing Plant on parcel 0005348300, geocode 02-3017-34-4-02-01-0000 subject to the following conditions:

1. The applicant obtains a Driveway Approach Permit from the Montana Department of Transportation and completes [...] a Transportation Impact Study if required by Montana Department of Transportation.
2. The applicant obtains the necessary water rights from the Department of Natural Resources and Conservation.
3. The applicant obtains approval from the City-County Health Department and the Montana Department of Environmental Quality for a new public water supply wastewater system. Board request that DEQ consider requirements for wastewater ponds to be lined.
4. The applicant obtains a Montana DEQ general permit for stormwater discharges associated with the construction and after construction installs required onsite, dent-detention basins for stormwater runoff as part of a stormwater pollution-prevention plan.
5. The applicant obtains any other county, state or federal permits required by the respective agencies for the legal operation of the proposed use.
6. The applicant add hires, adheres to all relevant building code requirements established by the Department of Labor and Industry.
7. Operation hours be limited to 7:00 AM to 7:00 PM.

8. All cheese manufacturing process activities must occur inside a fully enclosed building and not be visible to the general public, with air from the internal cheese manufacturing process treated or filtered to address odor concerns.
9. All setback requirements for the Ag-District must be followed.
10. Outside storage must be fully screened to conceal work equipment or materials not stored inside, with landscaping to meet or exceed County standards.
11. No structure is to extend into the height overlay district.
12. The applicant is to ex-ecute and record a road easement from Highway 89 to the parcel the Cheese Processing Plant is located on.
13. Outside lighting is to be designed to avoid light pollution with the goal of being dark sky friendly or dark sky compliant if possible. That's my motion."

Bill Austin (00:32:22): "Any comments, comments on the motion? It's pretty thorough."

Some public attendees state the word 'yeah'.

Michele Levine (00:32:33): "I think we need a second on the motion first. Or?"

Bill Austin (00:32:39): "Well, you can comment on the motion."

Michele Levine (00:32:43): "Um, Mr. Chairman and Charles and um, thank you for a detailed um, starting place. I think that a number of your measures address a number of the concerns and provide for some mitigation measures. One of the concerns that I have is pursuant to um, Special Use Permits on page 129 of our regulations um. We are required to consider traffic conditions in the vicinity, the effect of additional traffic on the streets and sight lines at street intersection and approaches. I do not feel that we yet have this information to be able to consider it or adequately mitigate it and I'm not sure if the Department of Transportation will provide that information um. In addition, we are also to ahh, um, examine protection of public community and private water supplies including possible adverse effects on surface waters or ground waters um. Given land application, I'm not sure that requires an NPDES Permit with the Department of Environmental Quality and I'm not sure if we have provided for adequate mitigation um, for that um. In addition, ah, there have been concerns raised regarding odor control um. I think that is also something that could potentially be a conflict that would mean to be um, mitigated under regulations.

Conditions may be required um, to mitigate potential conflicts in order to um, resolve those conflicts. I think we would need to address odor um. In addition, um, there could be design standards including paving to reduced ahh, dust ah, and address that air quality concern um. There may also be a need for ah, emergency access and secondary access ahh. I'm also wondering if we need monitoring of water quality and quantity um, regarding protection of private water supply. Since, these are exempt wells, they would not be required to get water rights. So that would not necessarily protect um, the water quantity for private water wells and that would place the burden on private folks to have to monitor that um and get their baseline data to determine whether or not there is a drop there um. I think those are a couple of concerns. I'm not sure whether the board is interested in an obtaining additional mitigation measures or not at this time. I would seek feedback from the board um. If so, we can try to work through adding some additional mitigation measures um. In addition, I'm not sure if we ever received any comment from ah, the fire districts? Ah, and whether or not ah, the provisions for water for firefighting would meet their needs. I just don't have that information

um, or whether or not any mitigation would be appropriate there ah. So those are some questions and concerns that I have for the rest of you."

Sandor Hopkins (00:35:57): "Mr. Chair, if I may?"

Bill Austin (00:35:57): "Yeah."

Sandor Hopkins (00:35:58): "We did notify the Sand Coulee Volunteer Fire Department by certified mail. They did not provide comments on this Special Use Permit."

Bill Austin (00:36:09): "Okay. So, from that, we can assume what?"

Sandor Hopkins (00:36:17): "I'm reluctant to make assumptions based on no response."

Bill Austin (00:36:21): "Thanks, I wouldn't either. Charles your original motion?"

Charles Kuether (00:36:35): "I'm, I'm sorry, what was the question?"

Bill Austin (00:36:38): "Ahh with Michele's concerns."

Charles Kuether (00:36:39): "Ah as far as I'm concerned, I'm making the motion. If someone would like to second it, I think we can take action."

Bill Austin (00:36:45): "Right, okay."

Charles Kuether (00:36:45): "Because there was no second ahh...."

Bill Austin (00:36:48): "It dies."

Charles Kuether (00:36:49): "Somebody else can make a motion. I-I was sort of throwing that out ah, as a place to start or we could take action or not."

Bill Austin (00:37:02): "All right. I just want to hear uh, that a little more, but I agree. I think there is a motion on the floor, and I think ahh, I would like to ask ah, for a vote on the motion."

Charles Kuether (00:37:13): "We have to get a second first or it's not...."

Bill Austin (00:37:15): "Oh, did we get a second?"

Michele Levine (00:37:16): "No, sorry."

Bill Austin (00:37:19): "No, I'm sorry. I did not get a second. Can we get a second on that motion?"

Rob Skawinski (00:37:21): "I'll second."

Rob Skawinski seconds the motion for approval.

Bill Austin (00:37:22): "Okay, we have a motion and a second on ahh, this to approve eh, I'm not going to read this whole thing again."

Bill Austin (00:37:39): "Okay, so we do have a motion and a second. So now--"

Charles Kuether (00:37:41): "Mr. Chairman?"

Bill Austin (00:37:42): "Yes, sir?"

Charles Kuether (00:37:43): "Before we go any farther. It seems to me the motion is now in play, because we have a motion and a second. So, if, if, if at this point if Michele or someone

else on there on the, the board wants to modify the motion, this, this is the time to do it before we take a vote."

Bill Austin (00:37:59): "Right. That's what I was gonna ask if Michele and add or modify."

Charles Kuether (00:38:59): "Okay."

Michele Levine (00:38:05): "Mr. Chair, if the other members are interested, I'm willing to do so. But if, if you're not interested, it seems like it could be an exercise in futility."

Bill Austin (00:38:13): "Okay."

Charles Kuether (00:38:14): "I'm, I'm always happy to see whatever I did improve. So, if you got improvements, I am happy cause...."

Bill Austin (00:38:22): "Well, I think, I think I really uh, commend Charles for this motion, because ahh, I think you pretty well in my mind covered everything that's needed to be covered and all those conditions. I mean, those are some pretty strict conditions you listed there, so I'm happy with that."

Rob Skawinski (00:38:55): "Umm, why don't we go through Michele's concerns one more time and then discuss ahh, mitigating each one of those. And add those to the motion."

Bill Austin (00:39:04): "Okay."

Rob Skawinski (00:39:05): "I, I'd feel comfortable doing it that way. And I think we should do that and Michele?"

Michele Levine (00:39:12): "Okay, um, starting with number one. One of the public comments that we received um, was for residents that lived directly across from the ah, proposed access point ah, for um, the uh, permit applicant um. In order to address that concern and if the um, new road um, at that location would create increased risk of crashes um, that um, the Department of Transportation um, be able to consider moving um, though the road location um, to increase safety. Again, I don't have the information on the sightlines, I don't have any information on the traffic study, but since we're kicking this to ah, the Department of Transportation to complete a traffic impact study and a driveway approach permit that they'd be allowed to consider relocating um, the intersection if necessary."

Bill Austin (00:40:16): "So, you would like that done prior?"

Michele Levine (00:40:19): "Eh, then that way they would empower the Department of Transportation to relocate the intersection if necessary."

Bill Austin (00:40:25): "Oh, okay under that that's the condition."

Michele Levine (00:40:27): "Correct. Since we're empowering the department to require a traffic impact study and an Approach Permit um. We could also allow them to consider relocation of the intersection."

Bill Austin (00:40:40): "Okay Charles?"

Charles Kuether (00:40:42): "Sounds good to me."

Bill Austin (00:40:45): "Okay."

Rob Skawinski (00:40:45): "I think they would automatically do that anyway. It's been my experience with encroachment permits uh, that they're going to check into the line of sight and

do their due diligence and they're either going to grant it if it's safe or they're gonna not granted if they required it to be moved."

Bill Austin (00:41:03): "Well that's something they're gonna do anyway."

Rob Skawinski (00:41:05): "I think so."

Bill Austin (00:41:06): "Yeah."

Michele Levine (00:41:08): "So, if they're going to do it anyway, I see no harm then in sticking it in there."

Charles Kuether (00:41:12): "Yeah. I, I think if we add that language to that item then if the department is going to go with any way we're covered, if they're not going to do it anyway, we, we could ask them to do it."

Bill Austin (00:41:21): "Right."

Charles Kuether (00:41:22): "So, I think that is the best of both worlds in that aspect."

Bill Austin (00:41:25): "Okay."

Michele Levine (00:41:27): "So that, what the language would be, the department may relocate the intersection if necessary."

Charles Kuether (00:41:34): "What I did was I added one line at the end. There uh, is if required by Montana Department of Transportation and I just put and relocate to the intersection if it can be approved."

Michele Levine (00:41:48): "Okay."

Bill Austin (00:41:51): "Okay you got that down?"

Charles Kuether (00:41:53): "Yup."

Bill Austin (00:41:56): "Okay, next?"

Michele Levine (00:41:58): "Umm next, I'm going to need some assistance on if there is another way to ensure whether private um, and public surface and groundwater supplies will be protected um. Since, the applicant has chosen to use exempt wells and that's the purview of the DNRC and not us and yet we have these criteria that we're supposed to um, protect um, these water supplies. So, I'm wondering how we do that...."

Bill Austin (00:42:30): "Let, let me—"

Michele Levine (00:42:31): "Some, other applicants are—some other counties have required um, monitoring of groundwater and surface water quality and quantity; and then, reporting that information to Planning offices on certain intervals as one way to um, to do that type of monitoring to meet our duties, to consider those under the regulations."

Bill Austin (00:42:52): "Well, that, that could be a condition, I mean we could do that."

Charles Kuether (00:42:55): "Michele, let me tell you what I was thinking when I wrote that um. I, I have a well, and my well is in the Madison. So, I'm directly affected by this recently; and what I was intending to say here is that the necessary water rights pertaining—well, what he's proposing is from what I understand two wells, much like my well I have for my house, which does not require a, a water right. I'm entitled to that something because I drill a well. I'm using less than a certain volume of water. So as a, a citizen who lives here and drills a well. I'm

entitled to that. And he would drill two wells that would allow him to do that, much like two homeowners were to build two houses, drill two wells. They would have exactly the same right.

That, that Mr. Friesen would have ah, in the eh, scenario that he's proposing in the application, in which case the DNRC would step in and they would require monitoring and the, the things that you are requesting. I don't think it's going to apply any more than if you had a homeowner drilling the well. So, unless he exceeds what he's asking for in his application, I, I think we're covered. If he exceeds what he's asking for in his application, he's, he's looking for a whole different kind of water right from the department—a very different creature. So, I think two covers what he's asking. If he changes his mind and goes a different direction or uses more water, then it's a different story, and he's going to have to play by different rules. At least that's my perception and that's why I wrote this way, the way I did."

A public attendee states that they cannot hear what Charles Kuether just stated.

Charles Kuether (00:44:59): "I'm sorry. I was addressing her instead of you or the applicant."

The public attendees state that they could not hear what Charles Kuether just stated.

Charles Kuether (00:45:03): "Okay, did you hear any of it?"

Some public attendees state that they could not hear what Charles Kuether just stated.

Charles Kuether (00:45:08): "Well, I was looking sideways is kinda the problem. Ah, what I was trying to say is that I have a well and my well is in the Madison. So, I'm affected by this as would anybody else whose using water through near the Madison. And what Mr. Friesen has done in his application is he has set up his proposal so that he would be drilling two wells that would serve much like the well that I have that serves my house. I don't have to apply for a water right. I'm simply entitled to that as a Montana citizen. I could drill a well tonight as long as I stay under a certain volume of water for household use or in his space for his facility. Each of those individual wells or my individual well I'm entitled to, as a matter of right. And the way he's written application and the way I think I have written this, if he stays within what he has proposed, he would be the same as if two homeowners came in and drilled individual wells. It, it won't have a huge impact on the Madison. If he changes his mind or the kind of operation that he is running such that he needs more water or wants to use more water. Then, he's going to have to have a different kind of water right. That's going to require monitoring and can require a whole different process from the department and what he is proposing now. And so, I was telling Michele is I think the language that I've worded addresses the proposal as it was submitted to us. If he modifies what he's doing, we're in a different ballpark and it would require a different situation. So, dealing with what was submitted to us, I think what I've written is, is adequate."

Michele Levine (00:46:51): "Mr. Chair uh, may I respond?"

Leonard Reed (00:46:55): "Michele wants to respond."

Bill Austin (00:46:58): "Fine."

Michele Levine (00:46:51): "Um, Mr. Chair and uh, Charles um, I was actually surprised that the applicant was using exempt wells because the combined appropriation does exceed ten acre feet um, as um, submitted in their information and pursuant to the Statute 85-2-306 Subpart 3A [of the MCA], um, a combined appropriation from the same source or two or more wells for developed springs exceeding ten acre feet of the flow rate requires a permit from DNRC. So, I do think that there is some potential that this could be considered a combined appropriation

that would require a water right, and that would not be subject to the exempt well provisions. That being said um, I still think we have an obligation under our regulations to protect public community and private water supplies including potential adverse effects on surface water or ground water. And that one of the ways we could mitigate um, that and provide for that protection is with some type of monitoring of quantity and quality um, to ensure that um, there are not adverse impacts that are born by adjacent land owners or by Giant Springs or others, senior water rights holders. And other counties have imposed um, uh, those types of monitoring requirements um, to mitigate that potential impact. That would also apply to the land application of the wastewater, which will contain organic matter, which could also seep into ground water or reach surface waters. So, since this is on a plateau. Uh, then, elevation will dictate that water and other things will roll downhill. Um, and so that would be a potential way to capture any potential impacts, and I'm wondering if the board is open to that idea of monitoring of quantity and quality to fulfill our burden under the regulations to protect water supplies: both surface water and ground water."

Bill Austin (00:49:18): "See, the way I read, we already got that in the way Charles has that written. Yeah. And he has to obtain the necessary water rights from the Montana Department of Natural Resources and Conservation. So, it might sound broad, but I mean that it covers the situation. Is that the way you, is that the way you see it?"

Charles Kuether (00:49:47): "That was my intent that, that if he does what he is applying for he is potentially covered using the exception, if you want to call it an exception. And if not, and Michele's right, then he has to go to the department and get some additional water rights. But I thought the language was such that either way we're covered. He either gets two individual wells and that's adequate or because of the statutory language Michele read, the department can step in and say, I'm sorry."

Bill Austin (00:50:22): "Great."

Charles Kuether (00:50:22): "You have to do something additional. And he wouldn't be mandated to do that by our approval."

Bill Austin (00:50:30): "That's, that's the way I understand it. They could always step in if it was necessary. If, if, ah, the way it's written makes them question I think they would step in and add something to that."

Michele Levine (00:50:49): "Ah, I'm not sure that DNRC does that level of monitoring and that it would be up to private citizens um, to determine whether or not there was an impact. And they would have to seek um, action to protect their water right. It would be basically transferring that burden to adjacent land owners to determine whether or not there is impact and then to take action to defend their water rights. I—I'm not aware of DNRC doing that level of monitoring um. And so we can put some monitoring sideboards here to mitigate potential impacts. If they're exempt wells um, then they're not going to be getting a water right and you're not going to be studying um, impacts to senior water rights holders, and this is an exempt well proposal. So, if they are not required to get a DNRC permit (and they wouldn't under this application as proposed). I don't think that the potential impacts to um, public and private water supplies are necessarily mitigated um, by the proposal or by the um, uh, um, paragraph three um, of the existing motion before us. Hence, why I would propose adding um, monitoring of um, public and um, private. They basically have monitoring wells for water quality and water quantity."

Bill Austin (00:52:14): "On, on item two? Are you talking?"

Michele Levine (00:52:18): "It would apply to item two and three."

Bill Austin (00:52:19): "Okay."

Michele Levine (00:52:20): "For water quality and quantity that we impose some type of monitoring uh, to ensure that there are not impacts to groundwater and surface water. That, that's a potential way we could mitigate those impacts."

Bill Austin (00:52:38): "Do you see what she is talking about ah, Charles?"

Charles Kuether (00:52:41): "Sure, all right. Do you have any proposed language you'd like to use?"

Michele Levine (00:52:50): "Um, let me see, um, I need a minute."

Rob Skawinski (00:53:02): "Can I interject while you are thinking about that?"

Michele Levine (00:53:03): "Yeah."

Rob Skawinski (00:53:04): "So, I think you're talking about maybe two, two separate things. One is monitoring the volume of water that's being used,"

Michele Levine (00:53:11): "Correct."

Rob Skawinski (00:53:12): "Which would have to be a water meter of some sort, which I think would be fairly easy to do. And uh, the other would be ground groundwater monitoring wells um, which I think are out there a little more costly to do. Like I think that's possible, possibility to do that also. Um...that's it."

Bill Austin (00:53:46): "Give Michele a minute to get her thoughts together right now."

Michele Levine (00:54:08): "Um, if we were to impose that type of monitoring, what do you think would be a fair timeframe? How, how often hmm?"

Bill Austin (00:54:28): "I mean they're using water every day. So...."

Rob Skawinski (00:54:35): "Are you thinking like a quarterly report?"

Michele Levine (00:54:38): "That's what I was thinking. That would account for the seasonal variations,"

Rob Skawinski (00:54:42): "Uh, hmm"

Michele Levine (00:54:43): "Um, because you're going to have substantial variation depending on season. And I mean, since we're going to be pulling the water out anyway, it would be pretty easy to take occasional water samples and send those to the lab uh. Their own wells will, you know, dictate um, quantity. I'm just wondering how to capture um, the adjacent landowners' permission um; or (maybe like you said) maybe another well on the edge of the property."

Bill Austin (00:55:16): "Yeah, I understand what, what you're getting at Michele, but with the volume of water that's put out every day there, I, I honestly can't see that uh—I don't think it is necessary because of the volume of water that Madison uh. I'm also in the Madison for my water so.... But if you think that it should be in there and that makes you feel that it will be more secure for us uh, later when somebody decided you know do something. Then, we should do that."

Michele Levine (00:56:05): "I, I hear what you're saying. Mr. Chairman but I think three million gallons of water annually could potentially impact a neighboring land owner. It might not

impact Giant Springs, but it could impact um, somebody closer um. There are landowners on that are relatively close um, as the crow flies to the proposed project. So, I—I'm not sure that it's fair to transfer that burden to them um, uh, to try to prove if they are harmed by any potential draw downs. Um, I'm just trying to think of how we could um, do some kind of monitoring uh, to just assure that we don't adversely impact—"

Bill Austin (00:56:47): "Oh, well if you have a monitor you would have to have uh, something to compared it to, I mean it could go over this amount or what? I mean what would be the penalty? I mean what would be the...."

Michele Levine (00:57:02): "Um, in other counties um, they set some permit conditions and then um, some compliance I was—again, I don't have that level of detail, which is why I wanted to postpone um, I'm vigilant to get that type of information. I'm just not in a position and um, so got a level of mitigation at this time um. So, um, I regret that I'm not in a position to try to mitigate those types of impacts. I do see that as a potential weakness for us; but I do think you could still do some quarterly monitoring at least, or groundwater and surface water quality um, and have that information to be submitted to the Planning office for public review um. And then the information is there for the public to review. I am not exactly sure what consequences there would be, but at least we would have the information if there are any changes. You can get both baseline information and then track it over time."

Leonard Reed (00:58:15): "The uh, Mr. Chairman the level of the water and the individual wells is um, going to be critical and uh Let's say you have a hundred-foot column of water in your well, which many people do, most are fifty or more. If that goes down significantly, then you'd know that you're in trouble ah. It's uh, it would be nice if there was some a way to do kind of a kit uh. EQC might have someone that could uh, mathematically uh, make a determination what that would do uh, because a uh, wells uh, column of water do change with the barometric pressure as Michele mentioned, with the uh, drought, now the snow pack in the mountains—of course it, I understand it take years to get from the mountains down to the wells."

Bill Austin (00:59:23): "Right."

Leonard Reed (00:59:24): "To all the sand and the rock formations. And uh, I—I'm concerned about that um. I think the only way to monitor that would be to look at the level of the wells um, and I think there's people that would be, uh, would do that fairly soon or very quickly. So that decision could be made about that."

Rob Skawinski (00:59:56): "Mr. Chair, can I ask a question of the engineer?"

Bill Austin nonverbally agrees.

Rob Skawinski (00:59:56): "Kevin or Joe? Uh, can you step up to the podium, please?"

Kevin May comes to the podium.

Rob Skawinski (01:00:11): "An exempt well is subjected to a certain volume of water is that correct?"

Kevin May (01:00:15): Correct, ten-acre feet per year, at a maximum, of thirty-five gallons a minute."

Rob Skawinski (01:00:24): "So, um, if we were to put up a, water meter on the well at some point (just like everybody has in their house) um, that, that way you could meter the water usage and report that on a quarterly basis. And if that water usage exceeded the amount that is

allowed by an exempt well then, the applicant would have to apply for uh, water rights through DNRC. "

Kevin May (01:00:52): "Uhh, my understanding is yes."

Rob Skawinski (01:00:55): "Cause I think the concern is that they're going to drill these two exempt wells and then they're going to use way more water than they what they say they're gonna use. And I think by right uh, legally, they have the legal right to drill the exempt wells per DNRC regulations. And there they have the right to that water. And if they exceed that volume, then they lose the right to the exempt well, and then they will have to go to either um, Giant Springs, or somebody and uh, whoever it may be and then buy more water rights. Um, I think that would...that's the question. I have another question for you. While you're up there. The other issue would be um, uh, the wastewater so um. You have ground monitoring wells for fuel stations, you have them for uh, dumps um. Could you do ground monitoring wells for this area to uh, monitor the quality of the groundwater at certain elevations?"

Kevin May (01:02:04): "Ah, yeah, so, a standard requirement from the Department of Environmental Quality for a lagoon system where wastewater will be stored will be for groundwater monitoring wells surrounding that uh. It allows us to track it for liners leaking or how that lagoon is performing. Um, so that is something that is standard in our permit for a wastewater system already."

Rob Skawinski (01:02:26): "And, and when you have those ground with monitoring wells, what is their requirement for reporting on those?"

Kevin May (01:02:32): "I believe they're quarterly, uh, but I don't have an exact, uh, it's either quarterly or monthly."

Rob Skawinski (01:02:37): "And who do you report that to?"

Kevin May (01:02:41): "DEQ."

Rob Skawinski (01:02:42): "Okay, thank you. That's it. Anybody else have any questions for the engineer?"

Bill Austin (01:02:49): "Yeah, I don't have any questions."

Kevin May (01:02:50): "Okay."

Rob Skawinski (01:02:51): "Okay, thank you."

Kevin May leaves the podium.

Michele Levine (01:02:53): "Mr. Chair I think um, Mr. Rob just came up with the conditions for me that we could require water meters on the exempt wells, require quarterly reporting from those water meters. And if the meters exceed the exempt well provisions, then the applicant will be required to get a water right. I think that's the condition right there."

Bill Austin (01:03:16): "Okay, so you would like to offer that as an amendment to the—"

Michele Levine (01:03:20): "Correct to number two."

Bill Austin (01:03:21): "Okay, you've got the exact wording on that?"

Michele Levine (01:03:26): "The applicant shall be required to place water meters on its wells and quarterly report the information from the meters to the Planning office. If the water usage

exceeds the exempt well requirements, uh, then the applicant shall obtain a water right from DNRC."

Bill Austin (01:03:50): "Okay, thank you. I think, I think that would cover it, Charles?"

Charles Kuether (01:03:55): "The um, the only flaw I see in that is uh, I, I don't know how you obtain a water right and whether you obtain it from DR-DNRC or from a current water right holder. And so, I wonder if the language about obtaining the water rights from DNRC is correct? Or if it should just say, we'll be required eh, to obtain uh, a water right from DNRC? You see where I'm going?"

Michele Levine (01:04:28): "Yeah, I do. And I'm, I'm fine with that. Obtain a water right for their usage, because there are many ways, they can obtain the water."

Charles Kuether (01:04:34): "Yeah."

Bill Austin (01:04:35): "Yeah."

Michele Levine (01:04:36): "They could even, you know, decide to get it from another water right holder."

Charles Kuether (01:04:39): "Yeah."

Michele Levine (01:04:40): "And truck it in or something. So that's fine."

Bill Austin (01:04:42): "That makes a little more sense to me too."

Michele Levine (01:04:44): "Yep."

Bill Austin (01:04:49): "Okay, moving on to the motion."

Charles Kuether (01:04:50): "So, we're okay number three?"

Bill Austin (01:04:54): "Yeah."

Michele Levine (01:04:55): "Uh, I think for number three uh, the um, the wastewater and it sounds like, and the ponds are already addressed with uh, DEQ regarding quarterly reporting. So, I don't think we need to duplicate their efforts."

Charles Kuether (01:05:10): "Eh, Michele why don't we add a condition that it be reported to the staff here as well as DEQ?"

Michele Levine (01:04:55): "Okay, then, um, in addition to number three, um, the board requires, um, the applicant, um, quarterly report um, it's groundwater monitoring to the Planning office."

Bill Austin (01:05:46): "Any other changes from number four down? I think you really did a good job putting that together."

Michele Levine (01:05:59): "Um, I have a few additional ones."

Some public attendees begin to whisper and murmur inaudibly.

Michele Levine (01:05:59): "Uh, that, um, the applicant design and adopt order controls to reduce air quality emissions. They said that they would have mitigation for air quality emissions, which just hold them to that."

Charles Kuether (01:06:20): "So, so is is, that part of number eight? Are we talking about odor?"

Michele Levine (01:06:27): "Yes."

Charles Kuether (01:06:28): "Okay."

Michele Levine (01:06:30): "So, number eight, I propose the applicant design and adopt odor controls to reduce, uh, air quality emissions."

Rob Skawinski (01:06:50): "Are you leaving the odor concern verbiage in there or are you changing it to air quality emissions? I think you want to leave odor concerns, because air quality (as I know it) is—"

Michele Levine (01:07:00): "That is more DEQ."

Rob Skawinski (01:07:01): "It measures—"

Bill Austin (01:07:03): "The odor, I think."

Rob Skawinski (01:07:04): "The particulates in the air not the odors."

Charles Kuether (01:07:07): "I think we're—"

Michele Levine (01:07:09): "Correct."

Charles Kuether (01:06:50): "I think we're adding—Oh, hang on I have to read."

Michele Levine (01:07:13): "Um, they basically designed and adopt, um, odor control measures that would trump."

Bill Austin (01:07:24): "Because the odor would be the main concerns? I would think."

Michele Levine (01:07:26): "Correct. It was a concern mentioned by numerous public comments. So, I wanted to mitigate it and address it. Another concern that, um, several commenters raised was um, having livestock and dairy cows on site. Again, I think primarily for that odor concern, one additional way we could mitigate that is prohibiting livestock and dairy cows on site. The applicant said that they are not intending for umm, any dairy cows on site. So that would just be um, holding the applicant to what they said they would do. Any objections to that?"

Bill Austin (01:08:08): "None."

Michele Levine (01:08:11): "So, I propose we add a prohibition on livestock and dairy cows being onsite."

Charles Kuether (01:08:16): "I just did. I added that at the end of thirteen."

Michele Levine (01:08:20): "Okay."

Bill Austin (01:08:30): "Does it look pretty—well that's a lot of conditions."

Michele Levine (01:08:36): "Well, we have a lot of things to mitigate."

Bill Austin (01:08:38): "That's ah—"

Michele Levine (01:08:39): "Umm..."

Bill Austin (01:08:40): "The most I've seen on anything that's come through here. But they sound, and I believe they're all necessary and they sound ahh pretty logical call."

Michele Levine (01:08:50): "We, we have our received concerns that uh, the roads be uh, onsite that they'd be sufficient width to accommodate emergency vehicles including fire trucks, um, and that they'd be paved to reduce odor and to accommodate emergency vehicles. So, I propose that the applicant be required to meet design standards regarding width paving and

subsurface for access roads to accommodate emergency vehicles and to provide for dust control."

Bill Austin (01:09:24): "Where, where were you putting in it? That's for the egress."

Michele Levine (01:09:27): "That, that would be a new one."

Bill Austin (01:09:29): "Okay, that's for an egress and ingress and emergency vehicles and so forth?"

Michele Levine (01:09:35): "We could also add an emergency, um, egress um, and secondary access that would provide, um, a way out in the event of a uh, fire situation. For example."

Bill Austin (01:09:51): "I thought, I think that should be in there because of, it's not, uh, somebody will bring that to our attention."

Leonard Reed (01:10:03): "Will make that number fourteen?"

Bill Austin (01:09:51): "That, that'd be number fifteen."

Michele Levine (01:10:05): "Yeah, fifteen. Should I repeat that, or did you guys get it, got it, to repeat that?"

Rob Skawinski (01:10:17): "Yes, please."

Michele Levine (01:10:19): "Okay. That the applicant shall meet design standards regarding width pavement and subsurface for access roads to accommodate emergency vehicles and to provide for dust control. So that would be fifteen. Sixteen would be that the applicant provides an emergency secondary access...Mr. Chairman may ask a planning staff a question?"

Bill Austin (01:11:08): "Yes."

Michele Levine (01:09:10): "Um, with your subdivision review, do you sometimes, uh, have a requirement that the um, applicant obtain any type of approval from the applicable fire district to make sure that they are providing adequate water supply for fire protection um, as well as any other fire concerns?"

Sandor Hopkins (01:11:31): "Yes, ma'am. We do on subdivisions with lots of, uh, three lots or more. So, pretty much all the major subdivisions will have some sort of fire suppression cistern, uh, built within the subdivision that has to be approved by the rural fire departments. Before we can file a final plat."

Michele Levine (01:11:51): "Um, Mr. Chairman, one of the concerns that we ah, received was regarding adequate um, fire protection and so perhaps we could have a measure that um, the applicant obtain approval from the applicable fire district,"

Bill Austin (01:12:08): "Th--"

Michele Levine (01:11:51): "Um, for firefighting cisterns or whatever it may be--"

Bill Austin (01:12:13): "Th-the fire department was notified, and ah as for their input and as I understand they did not respond with any, any input or anything."

Sandor Hopkins (01:12:28): "They did not provide comment."

Bill Austin (01:12:30): "Okay"

Rob Skawinski (01:12:30): "Mr. Chair could ask another question of the engineer?"

Bill Austin nods his head yes.

Rob Skawinski (01:12:35): "Mr. Kevin May. Would you step back up to the podium please?"

Kevin May comes to the podium.

Rob Skawinski (01:12:35): "Was one of the wells that you were, you guys were proposing, was it for fire suppression?"

Kevin May (01:12:54): "I believe we were looking at doing fire storage cisterns on site utilizing the water supply from the wells."

Rob Skawinski (01:13:01): "Okay, so part of your design, you have planned for fire fire suppression cisterns already?"

Kevin May (01:13:07): "Fire protection measures of some sort."

Rob Skawinski (01:13:10): "Okay, thank you. I don't see that as an issue. If you want to add it. I mean it sounds like that's already happened. So...."

Kevin May leaves the podium.

Bill Austin (01:13:22): "Uh, I don't, I think we even addressed that at the first meeting. If I remember right, they would have some uh, for fire protection that they take that into consideration. So, I think would seem like I remember something about that."

Charles Kuether (01:13:41): "Uh, I think you're right Rob. If we put it in there, it's probably already included. But but if we put it in there then we know that it's covered."

Bill Austin (01:13:52): "Sure. That'd be number seventeen? Okay, anything else?"

Michele Levine (01:13:59): "Charles? How do you want it to read?"

Charles Kuether (01:14:04): "That the cist-cisterns be eh, eh approved by the local fire district for fire suppression. Unless, you..."

Michele Levine (01:14:15): "Sounds good."

Charles Kuether (01:14:16): "Unless you got something better?"

Michele Levine (01:14:18): "No, that sounds good."

Charles Kuether (01:14:27): "Can, can you think of any other modifications we need to make?"

Bill Austin (01:14:43): "It seems to me like everything is pretty well covered."

Charles Kuether (01:14:51): "Do-you want to make that as a motion with the amended items on it, Michele?"

Michele Levine (01:14:59): "I'm just quickly checking through public comments to make sure we tried to mitigate as much as we can. One second."

Bill Austin (01:15:28): "Sandor, okay what's ahh the motion on the floor?"

Sandor Hopkins (01:15:40): "I will do my best repeat this."

Sandor Hopkins (01:15:49): "Okay, so I move the board adopt the staff report and its findings of facts starting on page two the report as well as the findings with respect to the analysis criteria. Also contained in the staff report dated 06/27/2019 for Special Use Permit #006-2019, pages 4-24 of the staff report and **approve** the Special Use Permit for the applicant's proposed cheese

processing plant on parcel 0005348300, geocode 02-3017-34-4-02-01-0000 subject to the following conditions:—and please correct me if I misspeak or mischaracterize any of the motions that were previously made. I did my best to write all this down as quickly as I could.

1. The applicant obtains a Driveway Approach Permit from the Montana Department of Transportation and complete a traffic impact study if required by MDT and allows MDT to consider relocating the intersection if deemed necessary.”

Charles Kuether (01:16:53): “I had put it as ‘be approved’ rather than ‘if it is necessary’”

Sandor Hopkins edits his writings.

Sandor Hopkins (01:16:57): ““It be approved””

Sandor Hopkins edits his writings.

Sandor Hopkins (01:17:25): “Thank you for your patience.

2. The applicant obtains the necessary water rights from the Montana Department of Natural Resources and Conservation and the applicant shall be required to place meters on wells and submit quarterly reports to Planning and obtain water rights if it exceeds the exempt levels provided by DNRC.
3. The applicant obtains approval from the City-County Health Department and Montana Department of Environmental Quality or DEQ for new public water— excuse me—new public water supply, waste water system. The board request that DEQ consider requirements for the wastewater ponds to be lined. The board requires the applicant to provide quarterly reports on the wastewater treatment to staff—excuse me—on the wastewater monitoring wells to staff.
4. The applicant obtains the Montana DEQ general permit for stormwater discharges associated with the construction activity and after construction install required onsite detention basins for stormwater runoff as part of a stormwater pollution prevention plan.
5. The applicant obtains any other county, state, or federal permits required by the respective agencies for the legal operation of the proposed use.
6. The applicant adheres to all relevant building code requirements established by the Department of Labor and Industry.
7. Operational hours be limited to 7:00 AM to 7:00 PM.
8. All cheese manufacturing process activities must occur inside a fully enclosed building and not be visible to the general public with air from the internal cheese manufacturing process being treated or filtered to address odor concerns; and the applicant is to design and adopt odor control measures.
9. All setback requirements for the [Ag] District must be followed.
10. Outside storage must be fully screened to conceal work equipment or materials not stored inside with landscaping to meet or exceed county standards.
11. No structure is to extend into the height overlay district.
12. The applicant is to execute or obtain and record a road easement from US Highway 89 to the parcel the cheese processing plant is located on.

13. Outside lighting is to be designed to avoid light pollution with the goal of being dark sky friendly or dark sky compliant if possible.
14. A prohibition on livestock from dairy cows onsite.
15. Applicant provides adequate access, built to county standards to prevent to mitigate dust control.

Was there additional language in there you'd like to read about road grading? We do have county standards for roads in our subdivision, regulations."

Charles Kuether (01:20:50): "The, the thing I had written down is that it was "to be wide enough for emergency vehicles."

Michele Levine (01:20:59): "Umm, and what I had was "design standards regarding width, pavement, and subsurface for access roads to accommodate emergency vehicles and provide for dust control shall be implemented."

Sandor Hopkins (01:21:23): "That's a big one. Can you please repeat it one more time so I can get it--"

Michele Levine (01:21:24): "Yeah."

Sandor Hopkins (01:21:24): "Right."

Michele Levine (01:21:25): "Yeah, I'll just walk over and give it to you."

Sandor Hopkins (01:21:28): "That would be better. Thank you."

Michele Levine walks over to give Sandor Hopkins her amendments to the motion.

Sandor Hopkins (01:21:48): "Thank you ma'am. Design standards regarding width—excuse me—this would be condition number fifteen design standards regarding width, pavement, and subsurface for access road to accommodate emergency vehicles and provide for dust control should be implemented."

16. Applicant provides emergency secondary access.

17. Applicant obtains fire suppression approval from the rural volunteer fire department."

Charles Kuether (01:22:26): "4, I had an approval for cisterns for improvement. So, the language that you've got I've put cistern in there somewhere."

Sandor Hopkins (01:22:40): "How about this: applicant obtains fire suppression cistern approval from the rural volunteer fire department?"

Charles Kuether (01:22:49): "And 'for fire suppression' at the end."

Sandor Hopkins (01:22:52): "Yes, okay. Applicant obtains fire suppression cistern approval from the rural volunteer fire department for fire suppression for the fire suppression system."

Charles Kuether (01:23:04): "Okay."

Sandor Hopkins (01:23:06): "I'm sorry I'm misphrasing that."

Charles Kuether (01:23:08): "No. No, you're good."

Sandor Hopkins (01:23:12): "Okay."

Bill Austin (01:23:19): "That's the motion, right?"

Sandor Hopkins (01:23:21): "That is it. Yes. Pardon my few hiccups there."

Bill Austin (01:23:24): "All right."

Michele Levine (01:23:27): "Umm, Mr. Chair? Umm, can we just check with eh the county attorneys and make sure we've covered your bases?"

Bill Austin nods in agreement.

Michele Levine (01:23:35): "Umm, Carey or Mercedes is there anything we've missed?"

Carey Ann Haight (01:23:39): "Are you talking? I'm, I'm sorry, you're talking in terms of the, the motion itself or?"

Michele Levine (01:23:44): "Correct."

Carey Ann Haight (01:23:44): "Well, you have an original motion on the floor, which has been seconded. I think what you've just reviewed are the proposed amended motion."

Bill Austin (01:23:50): "Amended motion."

Carey Ann Haight (01:23:52): "And so, you're granted a motion to amend the original motion consistent with what has just been proposed. If that's the board's intent."

Michele Levine (01:24:02): "Okay. Um, Mr. Chairman, I um **move to amend**, um, **the uh, motion** as jud—as was just read by planning staff um Sandor."

Bill Austin (01:24:17): "Did your, the amended motion is that what your—"

Michele Levine (01:24:21): "Correct."

Bill Austin (01:24:23): "Okay. There's a motion on the floor uh for the amended motion? Do we have a second on that?"

Rob Skawinski (01:24:34): "I'll second."

Rob Skawinski seconds the motion to amend the motion for approval.

Bill Austin (01:24:35): "Okay, we have a motion and a second. We already had plenty of discussion."

Michele Levine (01:24:44): "Um...Mr. Chair um...Charles, county attorneys have we sufficiently laid down our reasons for our findings?"

Charles Kuether (01:24:58): "My impression uh—"

Bill Austin (01:25:00): "Would you say that again? I don't think that I followed you."

Michele Levine (01:25:05): "So, we are required to explain what we're doing and why we're doing it. I think we've explained what we're doing in the motion but have the sufficiently explained why?"

Charles Kuether (01:25:19): "My-ah-my with the first part of the motion that I have originally made that you have now modified, where I said uh... where it happened the findings of fact on page two as well as the findings with respect to the analysis of the criteria and my reading of that criteria on pages 2-24, where the that they went through the criteria, and that they made findings with respect to those criteria. And in wording it the way I worded it, we are adopting

those findings. And so, yes. My impression is that we have made findings consistent with the public input and the staff report and that, that would be sufficient to support the motion."

Bill Austin (01:26:12): "That's what I was trying to get straight into my head. The uh-umm staff report is where it all started and then we got the input from the public— you know we try to uh— the request from the applicant for our motion now to approve that applicant request based on the previous information we have along with the added conditions to the amended motion if that's the way I understand it?"

Carey Ann Haight (01:26:53): "Mr.-Mr. Chair, if I could just interrupt briefly. I think what you have on the table right now is a motion to *amend* the previous motion and that has been seconded. So, you have not yet voted—"

Bill Austin (01:27:05): "Right."

Carey Ann Haight (01:26:06): "to amend it."

Bill Austin (01:27:07): "We have to approve the amended?"

Carey Ann Haight (01:26:09): "Correct."

Bill Austin (01:27:10): "Right."

Carey Ann Haight (01:26:10): "So, you still have it pending as an amendment that the board is going to consider. And then, once the board acts on whether it wants to amend that motion or not; then you would proceed with the next phase of this deliberation. I hope I'm making sense."

Bill Austin (01:27:30): "Well, we are gonna approve the amended motion now. We just ah spent all this time on."

Carey Ann Haight (01:27:38): "Yeah, it's, it's just that the boards ah, ah agreed to proceed with the motion as amended. You're not voting the amended motion."

Bill Austin (01:27:47): "Right."

Carey Ann Haight (01:26:48): "At this time. I just want to make that clear."

Bill Austin (01:27:49): "And that went with Michele's—"

Charles Kuether (01:27:51): "Well, I, I, I think. I think at this point we need to call the question whether or not we want to agree to amend the motion. Is that what you're saying?"

Bill Austin (01:28:07): "Right."

Carey Ann Haight (01:27:59): "That is what I'm saying."

Charles Kuether (01:28:00): "Yeah, yeah. So, do you need a vote on whether we're, whether we're, you are amending the motion?"

Carey Ann Haight (01:28:06): "Correct."

Bill Austin (01:28:07): "And, and that's what your mo- that's what you—"

Michele Levine (1:28:10): "Correct. So, do you want to amend that motion or not? So, first vote on an amendment and then you can vote on the whole thing?"

Bill Austin (01:28:20): "Right. So, we, we need a second on that."

Carey Ann Haight (01:28:23): "We have a second."

Charles Kuether (01:28:24): "We have a second."

Bill Austin (01:28:25): "We have a second on that. See, I'm getting a little confused here. We keep going back and forth. Okay. All in favor of the—"

Michele Levine (01:28:32): "Amendment"

Bill Austin (01:28:33): "Amendment of the motion"

Charles Kuether (01:28:35): "Of, of the motion."

Carey Ann Haight (01:28:36): "Amending the motion."

Bill Austin (01:28:37): "Amending the motion say aye."

All in favor, motion carries 5-0.

Bill Austin (01:28:41): "Okay let's ask now we are going to vote on the amendment motion? Is that correct?"

Michele Levine (01:28:48): "Correct. And for that, I think we need to just lay down some more track regarding the reasons. Um, and I think that our findings include what was faced in them in the staff report as well as all of the substantial public comment we received as well as the additional information from the permit's applicant, as well as the review of the standards that we took all of those things into account. Um, and considered the potential impacts, and that we have tried to mitigate those impacts as best we can um, with the um, conditions that we have set forth; and that those conditions should mitigate the traffic concerns, provision of services, um, soil erosion, sedimentation, stormwater runoff, protection of water supplies and um, protection of adjacent landowners. Um, as well as considering the, um, the nature and character of the surrounding area, which is primarily agricultural. This um, type of project is allowed as a special use in the Agricultural District. I think we have considered that character. Um, and we have tried to resolve the potential conflicts between the um, the Special Use Permit, um, and adjacent land owners. Um, and that we have considered the growth policy objectives, um, and that we have, um, done what we could to consider, um, the public concerns regarding the project. And I think that is in part the basis for our thought process. Um, regarding this Special Use Permit application."

Bill Austin (01:30:35): "Well isn't that primarily what all those conditions were to the address all that you just said?"

Michele Levine (01:30:43): "Right. And that we, we took into account not only the staff report findings but also the substantial um, public comment, and information. This just said the findings in the staff report. Um, so I just wanted it to be a little bit broader regarding our consideration in what we took into account."

Bill Austin (01:31:06): "Okay. Now that I-I've already forgot, did we, ha did we have a motion to accept the amended?"

Charles Kuether (01:31:15): "Yes, we did."

Michele Levine (01:31:16): "Yes, we did."

Bill Austin (01:31:16): "Okay. Do we have a second?"

Charles Kuether (01:31:15): "We, we've already—"

Michele Levine (01:31:20): "And we voted."

Bill Austin (01:31:21): "Right understand we've amended it."

Charles Kuether (01:31:23): "Now, we've can go vote whether or not we want to."

Bill Austin (01:31:25): "Right that was my question. Are we going to vote on the amended amendment? Ha-ha."

Michele Levine (01:31:35): "Correct."

Rob Skawinski (01:31:35): "Yes."

Bill Austin (01:31:36): "Can I have a motion to that effect."

Rob Skawinski (01:31:39): "I think that you just need to call for a vote."

Charles Kuether (01:31:41): "Yeah, just call for a vote."

Bill Austin (01:31:42): "All right. I'll call for vote either way. All in favor?"

All in favor, motion carries 5-0.

Succinctly, the board adopted the staff report and findings of fact starting on page 2 of the report as well as the findings with respect to the analysis criteria also contained in the staff report dated June 27, 2019, for SUP #006-2019, pages 4-24 of the staff report and approve the Special Use Permit for the applicant's proposed cheese processing plant on parcel 0005348300, geocode 02-3017-34-4-02-01-0000, subject to the following conditions:

- 1. The applicant obtains a Driveway Approach Permit from the Montana Department of Transportation ("MDT") and completes a Transportation Impact Study ("TIS") if required by MDT and allows the MDT to relocate the intersection if it is deemed necessary.*
- 2. The applicant obtains the necessary water rights from the Montana Department of Natural Resources and Conservation ("DNRC"). The applicant shall be required to place meters on wells and submit quarterly reports to the Planning Department and obtain water rights if usage exceeds the exempt well levels provided by DNRC.*
- 3. The applicant obtains approval from the City-County Health Department and Montana Department of Environmental Quality ("MDEQ") for a new public water supply/wastewater system. The board requests the DEQ consider requirements for the wastewater ponds to be lined. The board requires the applicant to provide quarterly reports on the wastewater monitoring wells to the Planning Department.*
- 4. The applicant obtains a MDEQ general permit for storm water discharges associated with the construction activity and, after construction, installs required onsite detention basins for storm water runoff as part of a storm water pollution prevention plan.*
- 5. The applicant obtains any other county, state, or federal permits required by the respective agencies for the legal operation of the proposed use.*
- 6. The applicant adheres to all relevant building code requirements established by the Department of Labor and Industry.*
- 7. Operational hours shall be limited to 7:00 AM to 7:00 PM.*
- 8. All cheese manufacturing process activities must occur inside a fully enclosed building and not be visible to the general public, with air from the internal cheese manufacturing*

process being treated or filtered to address odor concerns. The applicant is to design and adopt odor control measures.

9. All setback requirements for the Agricultural District must be followed.
10. Outside storage must be fully screened to conceal work equipment or materials not stored inside, with landscaping to meet or exceed county standards.
11. No structure is to extend into the Height Overlay District.
12. The applicant is to execute or obtain and record a road easement from US Highway 89 to the parcel the cheese processing plant is located on.
13. Outside lighting is to be designed to avoid light pollution with the goal of being dark sky friendly or dark sky compliant if possible.
14. Livestock and dairy cows are prohibited on site.
15. Design standards regarding width, pavement and subsurface for access road to accommodate emergency vehicles and provide for dust control shall be implemented.
16. Applicant shall provide emergency secondary access.
17. Applicant obtains fire suppression cistern approval from the Rural Volunteer Fire Department for the fire suppression system.

Then, there is some inaudible board discussion happening in the background as well as various public attendees getting up to leave the room.

Charles Kuether (01:32:18): "I-I don't know if you guys got lost in this discussion or not. What, what we've done is we made a motion to approve the application for the cheese processing plant. The motion was amended and we, we approve the amended motion. Then, we have approved the motion. So, what we have done now is we have approved the cheese processing plant application with the seventeen uh, conditions that Sandor read to the audience here a few minutes ago. So that's the status of things right now. The application has been approved, a permit will be issued, it will be issued conditional on the seventeen items that Sandor read so you guys are kinda all on the same page. You know what we've, we've done at this point and then from now on we're going to go on to new business."

Michele Levine (01:33:18): "Umm, Mr. Chair, do you want to have a brief recess?"

Bill Austin (01:33:20): "Yeah. I'd, I'd like to take just a short recess."

Recess starts at 07:06 PM

Recess ends at 07:12 PM

5. NEW BUSINESS:

A. SUP 009-2019, Second Dwelling – Janelle Smith

1. Staff Report by Anna Ehnes

Motions:

- A. **Alternative 1:** "Alternative 1: Move the Special Use Permit to allow for a Second Dwelling on Parcel 0004141 500, Geocode 02-2893-13-1-03-03-0000 **be denied** due to (ZBOA member proposing denial must delineate legal reason that the application be denied),"

OR

- B. **Alternative 2:** "Move the Board adopt the staff report and findings of fact and **approve** the Special Use Permit to allow for a Second Dwelling on Parcel 0004141500, Geocode 02-2893-13-1-03-03-0000 subject to the following conditions:

1. The applicant obtains any other required county, state, or federal permits and comply with regulations associated with any other permits.
2. The applicant provides a letter from the Stockett Water & Sewer District to confirm their ability to connect to Stockett city water.
3. The applicant obtains wastewater approval and septic permit from the Cascade City-County Health Department.
4. The applicant provides a to-scale site plan showing the distance from their proposed structure to the closest point of the Special Flood Hazard Area.
5. The applicant obtains an Approach Permit from the Cascade County Road and Bridge Division for their approach on to Dahns Lane."

2. Board Discussion & Action

Board Discussion

Charles Kuether (01:52:47): asks the applicant if there is anything that she would like the staff or board to know.

Bill Austin (01:52:50): asks the applicant if there is anything that the applicant would like to say or note.

Janelle Smith at 40 Brown Rd. Sand Coulee, MT 59472 (01:52:52): says that she just hopes that she has filled out the application correctly.

Bill Austin (01:52:59): replies that she did well.

Public Hearing opened at 07:32 PM

Bill Austin asked for proponents: one (1)

Jesse S. Lee at 375 N. Main St. Simms, MT 59477 (01:52:59): says that it sounds like a great idea.

Bill Austin asked for opponents: none

Public Hearing closed at 07:34 PM

Board Discussion and Decision

Charles Kuether (01:55:00): asks if it is on Dahns lane.

Anna Ehnes (01:55:08): replies yes and describes the location of where the approach will be at.

Charles Kuether (01:55:13): asks if the access to the approach is coming downward.

Anna Ehnes (01:55:16): replies yes.

Charles Kuether (01:55:17): says that he was just curious why they were receiving a permit.

Anna Ehnes (01:55:22): replies yes and that the approach is/maybe an already existing approach. It may also be Agricultural. However, Cascade County Road and Bridge does not have a current approach permit on file, which is why the applicant must apply for an approach permit for a residential approach.

Charles Kuether (01:55:33): understands. He motions to "move the Board [to] adopt the staff report and findings of fact and **approve** the Special Use Permit to allow for a Second Dwelling on Parcel 0004141500, Geocode 02-2893-13-1-03-03-0000 subject to the following conditions:

1. The applicant obtains any other required county, state, or federal permits and comply with regulations associated with any other permits.
2. The applicant provides a letter from the Stockett Water & Sewer District to confirm their ability to connect to Stockett city water.
3. The applicant obtains wastewater approval and septic permit from the Cascade City-County Health Department.
4. The applicant provides a to-scale site plan showing the distance from their proposed structure to the closest point of the Special Flood Hazard Area.
5. The applicant obtains an Approach Permit from the Cascade County Road and Bridge Division for their approach on to Dahns Lane."

Rob Skawinski seconds the motion to **approve**.

All in favor, motion carries 5-0.

B. SUP 010-2019, Accessory Use without Principal Use – Michael Funseth

1. Staff Report by Sandor Hopkins

Motions:

A. Alternative 1: "Move the Special Use Permit to allow the construction of a personal garage on the property legally described as Tract A of Certificate of Survey 5221 be **denied** due to (ZBOA member proposing denial must delineate legal reason that the application be denied)."

OR

B. Alternative 2: "Move the Board to adopt the staff report and **approve** the Special Use Permit to allow the construction of a personal garage on the property legally described as Tract A of Certificate of Survey 5221, subject to the following conditions:

1. The applicant obtains any other required county, state, or federal permits and comply with regulations associated with any other permits.
2. The applicant obtains an approach and curb-cut from the City of Great Falls Public Works.

3. The applicant must obtain a Certificate of Subdivision Approval from the Department of Environmental Quality to lift the sanitary restriction placed on the tract by Certificate of Survey 5221.
4. Allow City of Great Falls Environmental Division to review run-off during construction."

2. Board Discussion & Action

Board Discussion

Bill Austin (02:14:24): ask if the applicant would like to step forward and come to the podium.

Rob Skawinski (02:14:30): states that the applicant does not appear to be here.

Sandor Hopkins (02:14:31): states that he does not see the applicant.

The chairman understands.

Public Hearing opened at 07:54 PM

Bill Austin asked for proponents: none

Bill Austin asked for opponents: none

Public Hearing closed at 07:54 PM

Board Discussion and Decision

Michele Levine (02:16:08): motions to "Move the Board to adopt the staff report and **approve** the Special Use Permit to allow the construction of a personal garage on the property legally described as Tract A of Certificate of Survey 5221, subject to the following conditions:

1. The applicant obtains any other required county, state, or federal permits and comply with regulations associated with any other permits.
2. The applicant obtains an approach and curb-cut from the City of Great Falls Public Works.
3. The applicant must obtain a Certificate of Subdivision Approval from the Department of Environmental Quality to lift the sanitary restriction placed on the tract by Certificate of Survey 5221.
4. Allow City of Great Falls Environmental Division to review run-off during construction."

Charles Kuether seconds the motion to approve.

All in favor, motion carries 5-0.

C. SUP 011-2019, Accessory Dwelling Unit – Jesse S. Lee

1. Staff Report by Michael Stone

Motions:

- A. **Alternative 1:** "Move the Special Use Permit to allow an accessory dwelling unit at the subject property be **denied** due to (ZBOA member proposing denial must delineate legal reason that the application be denied),"

OR

B. **Alternative 2:** "Move the Board adopt the staff report and findings of fact, and **approve** the Special Use Permit to allow an accessory dwelling unit at the subject property subject to the following conditions:

1. The applicant obtains a State homeowner's electrical permit and any other required county, state, or federal permits.
2. The applicant obtains an address from the Cascade County GIS Department."

2. Board Discussion & Action

Board Discussion

Bill Austin (02:36:01): states that this SUP is also a public hearing. He asks if the applicant would like to step forward and come to the podium.

Jesse S. Lee (02:36:18): thanks the board and asks if they have any questions regarding his application.

Public Hearing opened at 08:15 PM

Bill Austin asked for proponents: none

Bill Austin asked for opponents: none

Public Hearing closed at 08:16 PM

Board Discussion and Decision

Charles Kuether (02:37:29): motion to "Move the Board adopt the staff report and findings of fact, and **approve** the Special Use Permit to allow an accessory dwelling unit at the subject property subject to the following conditions:

1. The applicant obtains a State homeowner's electrical permit and any other required county, state, or federal permits.
2. The applicant obtains an address from the Cascade County GIS Department."

Leonard Reed seconds the motion to approve.
All in favor, motion carries 5-0.

6. BOARD MATTERS: NONE.

7. PUBLIC COMMENTS REGARDING BOARD MATTERS:

Eileen Hyndman at 983 McIver Rd. Great Falls, MT 59404 (02:38:55): says that she finds a SUP to be in violation of their conditions of their approved SUP. She says that she also has some photo documentation of the alleged violation and an order from the Cascade County Commissioners.

Eileen Hyndman passes the photo documentation as well as the order from the county

commissioners out to the board members.

Bill Austin (02:39:28): asks for clarification as to which SUP is in violation of their approved conditions.

Eileen Hyndman (02:39:33): clarifies that it is the SUP 001-2017 Rockwell Scales.² She also shows an order from the Cascade County Commissioners as well as reiterates that she has some photo documentation. She says according to Mr. Rockwell's SUP it may be revoked by the Cascade County Zoning Board of Adjustment and it could be appealed. She said that Rockwell Scales had a violation letter sent to them in 2017. She says the neighbors have been complaining about his business since day one (1). She said that her neighbor lost this letter of the violation by Rockwell Scales and they just rediscovered the letter. She says that this SUP is supposed to have appropriate landscaping around the perimeter of the property in order to conceal work equipment and materials not stored within the business building. She said that she has been directed to discuss her issues with this SUP with the Sheriff and the Planning Department. She says that the Sheriff's Department cannot enforce any of the noise complaints as there is no noise or an odor ordinance in place. She says that she wrote a letter to the Planning staff that the SUP was in violation of their conditions. However, the Planning staff stated to her that they could not find that the SUP 001-2017 was in violation of their approved conditions. She says that she is at her wits end. She wonders how they can enforce this order. She says that nothing has been done by the county and that no one from the county has been over the site. She says that the order was sent to the neighbors. She says that there is no enforcement on behalf of the county. She asks the board how the board will enforce her accusation of their being violations of the conditions SUP.

Eileen Hyndman also describes her personal feelings and opinions towards Mr. Rockwell.

Rob Skawinski (02:47:37): ask if we could try to get this question resolved.

Bill Austin (02:47:42): asks for clarification on the letter that she passed around. If it is from the Cascade County Commissioners.

Eileen Hyndman (02:47:46): clarifies that the letter was signed by the Commissioners.

Bill Austin (02:47:47): asks if it is from May 11, 2018.

Eileen Hyndman (02:47:51): replies yes.

Bill Austin (02:47:56): asks if this letter is based on her request for action.

Eileen Hyndman (02:47:56): replies yes.

Bill Austin (02:48:00): asks if no action has taken place since this letter was sent and received.

Eileen Hyndman (02:48:00): replies yes and there has been repeated complaints. She discusses her issues in regard to the photo documentation.

Rob Skawinski (02:48:15): asks Sandor Hopkins who investigates these issues and enforces permits.

Sandor Hopkins (02:48:22): responds that violations are typically investigated by the Planning Department, unless it violates other aspects of the SUP permit, such as aspects of a permit

² For more information on SUP 001-2017 please see ZBOA meeting September 17, 2019 at: www.cascadecountymt.gov/departments/public-works/planning/zoning-board/2019.

involving DEQ. The Planning Department has visited this specific property multiple times and has spoken to Mr. Rockwell and he currently is planning to try to get his property into compliance of their SUP conditions. Unfortunately, we at this time have not followed through with this enforcement or further enforcement action.

Bill Austin (02:49:01): asks if action is being taken.

Charity Yonker (02:49:05): states that Mr. Rockwell is working towards compliance. She says that Zoning Board of Adjustment (ZBOA) could call it a "correction action plan". She states that Mr. Rockwell has been very forthcoming and willing to work towards compliance. She says any individual that is willing to come into compliance on their own. We will allow them time to come into compliance.

Charles Kuether (02:49:30): asks if there is a deadline at this point of time.

Eileen Hyndman (02:49:37): states that a paper reads ninety (90) days.

Charles Kuether (02:49:39): clarifies that he is discussing currently within this correction action plan.

Charity Yonker (02:49:53): states that they generally give people a reasonable amount of time. If a person is out of compliance but make some effort to comply. The county will be flexible in order to allow the person time to complete the steps in order to come into compliance. She says that she is uncertain at this moment of what the deadline is for this correction action plan.

Charles Kuether (02:50:08): asks if the board could have a report or some details on this incident in order to get back to Ms. Hyndman.

Charity Yonker (02:50:16): replies yes.

Rob Skawinski (02:50:18): states that it would also be nice to have a deadline or to know when the deadline is for Rockwell Scales.

Charity Yonker (02:50:29): states and asks if the only issue currently that this SUP has is the landscaping requirements to conceal the business.

Sandor Hopkins (02:50:40): replies yes. He also mentions that there was question and concerns regarding the site plan for the proposed business as well as the statements that were made during the first SUP 001-2017 public hearing meeting. He says the Planning Department is working through and on the topic this issue for a long time.

Bill Austin (02:51:04): asks if work is in fact being done and the Planning Department is working to their best of their ability to resolve these issues.

Sandor Hopkins (02:51:10): replies yes and that they are aware of this issue.

Eileen Hyndman (02:51:13): states there is no current work.

Charles Kuether (02:51:16): asks from the Planning Department's end is Mr. Rockwell working on his deadline. He asks where he is along his correction action plan.

Sandor Hopkins (02:51:20): states that he has personally not establish any deadline yet.

Charles Kuether (02:51:32): states that it will be difficult to meet the standards when it becomes winter nor will it become any better.

Sandor Hopkins (02:51:35): agrees.

Charles Kuether (02:51:36): asks if the Planning Department can give the ZBOA a deadline as well as provide the board additional information regarding the concerns.

Sandor Hopkins (02:51:53): replies yes.

Charity Yonker (02:51:55): states that City-County Health Department and DEQ has also investigated these accusations within the past year. Neither City-County Health Department or DEQ has found any violations regarding this property and SUP.

Leonard Reed (02:52:25): asks if it is mostly to reduce the noise. He also states something inaudible.

Charity Yonker (02:52:23): replies yes and that his SUP conditions states that he only needs to screen his equipment.

Sandor Hopkins (02:52:34): replies that he finds that correct. He says that he did not bring the SUP 001-2017 file to this board meeting.

Eileen Hyndman (02:52:37): says that she has not seen anything from DEQ. She says that the MEIC to call DEQ.

Rob Skawinski (02:52:48): replies that the ZBOA has no jurisdiction over the Department of Environmental Quality (DEQ). The ZBOA can look at the approved conditions on this permit and see if the applicant of this permit is currently in compliance to those approved conditions. If that person is out of compliance, then that person has so many days to get into compliance.

Bill Austin (02:53:01): states that the applicant is taking action currently.

Charles Kuether (02:53:07): suggest at the next meeting they could review the SUP 001-2019 and the alleged violations, as well as set a deadline.

Eileen Hyndman (02:53:29): states that he was issued his SUP in 2017 and near her property. She says that he was not given the letter until 2018. She says that it is the year 2019.

Charles Kuether (02:54:28): states that she has brought this complaint to the board. As a board, they need to possibly ask the board members who were on the board in 2017, as well as ask the staff for all of the information regarding the SUP 001-2017 at this point in time. Since, he for instance was not on the board during that time.

Eileen Hyndman (02:55:01): states she has not heard anything.

Charles Kuether (02:53:03): states he understands, which is why he wants to ask for this information from the county. Once, the board has enough information. The board can make more of an informed decision/resolution.

Eileen Hyndman (02:55:18): asks if she should have brought her accusations to this board a year ago.

Charles Kuether (02:55:22): states that might have been worth it.

Bill Austin (02:55:23): states yes. He says the board can only start from when you (the public) have brought to their attention.

Charles Kuether (02:55:31): states that until this board knows that something is a problem, they cannot do much about it.

Leonard Reed (02:55:38): ask Ms. Hyndman if Mr. Rockwell was to come into compliance with his SUP conditions would that satisfy her complaint.

Eileen Hyndman (02:53:01): states, "Of, of that complaint, yes, but [...] I mean how can he state this fence is supposed to shield us from noise, fumes, vibrations?" She says that this fence has not occurred.

Leonard Reed (02:56:05): states what the letter request that is signed by the Cascade County Commissioners. He asks her if this fence will be sufficient.

Eileen Hyndman (02:56:26): states "yes" however she says that she does have issues with approved conditions. She goes on to say that our current zoning regulations make any order unenforceable in regard to odor and noise.

Leonard Reed (02:57:05): asks her if he did some the things that are stated in his regulations would suffice her.

Eileen Hyndman (02:57:13): states, "It, it doesn't sir." She goes on to state that she has recordings of the noise from the Rockwell Scales.

Bill Austin (02:57:23): thanks her for bringing it to the board's attention. However, there is simply nothing that the board can do at this point in time. Nevertheless, it is duly noted and will be in the written minutes. We will do some further investigations, but this is all the board can do tonight.

Michele Levine (02:57:47): states the violation letter does state that there is a deadline on the original letter. She states that there is a fine for exceeding the deadline or imprisonment. She states that Mr. Rockwell has had over two (2) years to comply. She says at some point we need to say that he is in violation or else the work that we do here will have no enforcement and will not make a whole lot of sense.

Bill Austin (02:58:38): states that he understands. The alleged violation has been brought to the boards attention and they move from there. "I don't see how we can go backwards. We have to go from here forwards."

Michele Levine (02:58:56): states since it is a misdemeanor it will also go the County Attorney's office to proceed prosecution with the evidence.

Charles Kuether (02:59:09): agrees but there is to levels of notice. He says one level of notice was to the Commissioners a year ago. The other level of notice is here tonight. It may count as a new thirty day to compliance, violation period.

Michele Levine (02:59:30): understands. She says that someone must issue the notice to comply or cease and desist. She asks who would issue this notice.

Charles Kuether understands.

Sandor Hopkins (02:59:45): states the Planning Department would initiate the first notice in this case. He says that he finds that the Planning Department has done so in the past. He does not have that information on hand to confirm his statement. He says in the past the Cascade County Attorney's office has sent out these letters as well. He says that they try to communicate these situations with one another.

Michele Levine (03:00:08): says that it sounds good and asks for the staff to keep the board posted.

Sandor Hopkins (03:00:11): agrees.

Leonard Reed (03:00:14): thanks Eileen Hyndman for coming tonight to state her complaint and for doing her research.

Eileen Hyndman states that she has all of the minutes, board materials, and so forth... She says that she has personally not found any integrity in this whole situation. Eileen Hyndman also describes her

personal feelings and opinions towards Mr. Rockwell.

Bill Austin (03:01:20): thanks Ms. Hyndman. He says that the board will see what they can do.

The board converse with one another.

8. ADJOURNMENT:

Leonard Reed made a motion to adjourn.

Rob Skawinski seconds the motion.

All in favor 5-0, meeting adjourned at 09:12 PM

Michele R. Lewis
Chairman or Vice Chairman
(Print)

Michele R. Lewis
Signature

11-18-19
Date

Sander Hopkins
Planning Staff (Print)

[Signature]
Signature

11-19-19
Date